

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:		§	ATTORNEY DOCKET NO. MFCP.109834
TIMOTHY P. MCKEE, <i>ET AL.</i>		§	
		§	
SERIAL NO.	10/691,885	§	CONFIRMATION NO.: 8986
		§	
FILING DATE:	OCTOBER 23, 2003	§	GROUP ART UNIT: 2174
		§	
TITLE: SYSTEM AND A METHOD FOR		§	
PRESENTING ITEMS TO A USER		§	
WITH A CONTEXTUAL		§	
PRESENTATION		§	EXAMINER: BORIS M. PESIN

Via EFS on Nov. 1, 2010

Mail Stop Petitions
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

**REVISED PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON
FAILURE TO RECEIVE OFFICE ACTION UNDER 37 CFR 1.181**

In response to the Notice of Abandonment mailed October 6, 2010 and the Decision on Petition mail October 22, 2010, Applicants respectfully request acceptance of the following revised petition.

According to MPEP 711.03(c) an Applicant can submit a petition to the Director under 37 CFR 1.181 to withdraw the holding of abandonment if an office action was never received. Under *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971) an allegation that an office action was never received may be considered in a petition, if adequately supported, to withdraw the holding of abandonment. MPEP 711.03(c) I.A. states "The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a

search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement."

The application referenced above was filed on October 23, 2003. On June 10, 2010, a Notice of Allowance was mailed. Applicants have no record of any further correspondence received from the USPTO until the Notice of Abandonment, which was mailed on October 6, 2010. While the Notice of Abandonment was issued in response to "the applicant's failure to timely file a proper reply to the Office letter mailed on 07-22-10," no such letter was ever received by the Applicants. On October 13, 2010, Applicants filed a petition requesting withdrawal of the holding of abandonment. The petition, however, was dismissed in a Decision on Petition mail October 22, 2010. That Decision noted additional information that must be included along with the petition to allow a decision on the merits. Given this guidance, the instant revised petition provides the requisite information establishing that the Office Action was in fact not received by the practitioner.

(1) A statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable.

The system used for recording Office actions received at the correspondence address is described as follows. Office actions are generally received through hard copy mail. Upon receipt, docketing professionals date stamp the Office actions and code the documents according to reference numbers and attorney. After the documents have been properly coded, the documents are committed to a master docket, which indicates all incoming correspondence regarding patent prosecution files. The Office actions are also committed as to a computerized

docket maintained on an application-by-application basis. This computerized docket is generated by a software program sold by Computer Packages Inc. (CPI). According to CPI's website, "Computer Packages is the oldest company (over 40 years) providing Patent and Trademark Intellectual Property Management Systems and Patent Annuity Payment Services." "The Computer Packages Patent Management System for corporations and law firms is the best tool on the market for the management of patent portfolios." CPI maintains and tracks due dates and other critical information pertaining to the patent applications. As set forth below, the Office action-at-issue here (mailed July 22, 2010) does not appear on either the firm's master docket or the application's CPI docket.

As to the reliability of the above described docketing system, this system has proven extremely dependable. As of the end of October, the instant correspondence address has received approximately 5,425 pieces of mail from USPTO thus far in 2010. Despite this volume of mail, issues such as those raised by the present petition (i.e., the non-receipt of correspondence) arise with respect to far less than one percent of the correspondence. Given this track record along with the above-mentioned docketing procedures, Applicants respectfully submit that the docketing system employed by the undersigned's firm is in fact highly reliable.

(2) A statement from the practitioner that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received.

A declaration is included with this petition attesting to the fact that the file jacket and docket records have been searched for the USPTO correspondence in question but to no avail.

(3) A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm.

As Attachment A to the Statement provided herewith, Applicants also submit for your consideration a copy of internal docket records for this application indicating all written correspondence with the USPTO. This docket record sheet does not include any reference to the Office Action dated July 22, 2010. Likewise, Attachment B reflects the firm's July 2010 master docket of incoming correspondence related to patent prosecution files. Correspondence related to the instant application is designated by its Attorney Docket Number, MFCP. 109834. The master docket does not include any reference to the Office Action dated July 22, 2010, indicating that this action was never received by the Applicants.

In light of the forgoing, Applicants respectfully submit that the abandonment of this application should be withdrawn and the last office communication be reissued so the Applicants can respond in a timely manner. In accordance with 37 CFR 1.181 (a), no fee is believed due in connection with this petition.

Respectfully submitted,

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